

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2210

Introduced by Assembly Member Fuentes

February 18, 2010

An act to add Section 633.8 to the Penal Code, relating to interception of communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2210, as amended, Fuentes. Intercepted communications: hostage taking and barricading.

Existing law prohibits a person from intentionally eavesdropping or recording a confidential communication by means of any electronic amplifying device or recording device without the consent of all parties to the communication. Under existing law, specified law enforcement agents may make a written application to a judge to authorize the interception of a wire, electronic pager, or electronic cellular telephone communication. In certain instances the application can be made informally and granted orally if an emergency situation exists, as specified.

This bill would authorize a peace officer who is authorized by a county district attorney or the Attorney General to authorize the use of an electronic amplifying or recording device to eavesdrop on or record, or both, any *oral* communication in an emergency situation involving the taking of hostages or the barricading of a location if the peace officer has probable cause to believe an emergency situation exists ~~that requires communications be intercepted before an order authorizing the interception can be obtained~~, *that the emergency situation requires that the eavesdropping occur immediately, and that there are grounds upon*

which an order could be obtained in regard to certain specified offenses.
This bill would require a written application to be made seeking to authorize the ~~interception~~ *eavesdropping* within 48 hours.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 633.8 is added to the Penal Code, to read:
2 633.8. (a) It is the intent of the Legislature in enacting this
3 section to provide law enforcement with the ability to use electronic
4 amplifying or recording devices to eavesdrop and record the
5 otherwise confidential oral communications of individuals within
6 a location when responding to an emergency situation that involves
7 the taking of a hostage or the barricading of a location. It is the
8 intent of the Legislature that ~~intercepting~~ *eavesdropping on oral*
9 *communications pursuant to this section comply with paragraph*
10 *(7) of Section 2518 of Title 18 of the United States Code*
11 ~~authorizing communication interceptions in emergency situations.~~
12 (b) Notwithstanding the provisions of this chapter, and in
13 accordance with federal law, a designated peace officer described
14 in subdivision (c) may use, or authorize the use of, an electronic
15 amplifying or recording device to eavesdrop on or record, or both,
16 ~~any oral~~ communication within a particular location in response
17 to an emergency situation involving the taking of a hostage or
18 hostages or the barricading of a location if ~~the designated peace~~
19 ~~officer determines both~~ *all of the following conditions are satisfied:*
20 (1) ~~There is probable cause to believe~~ *The officer reasonably*
21 *determines* that an emergency situation exists involving the
22 immediate danger of death or serious physical injury to any person,
23 ~~as defined in within the meaning of~~ Section 2518(7)(a)(i) of Title
24 18 of the United States Code.
25 (2) ~~That the emergency situation requires that communications~~
26 ~~be intercepted before an order authorizing the interception can,~~
27 ~~with due diligence, be obtained.~~
28 (2) *The officer determines that the emergency situation requires*
29 *that the eavesdropping on oral communication occur immediately.*
30 (3) *There are grounds upon which an order could be obtained*
31 *pursuant to Section 2516(2) of Title 18 of the United States Code*
32 *in regard to the offenses enumerated therein.*

1 (c) Only a peace officer who has been designated by either a
2 district attorney in the county where the emergency exists, or by
3 the Attorney General to make the necessary determinations
4 pursuant to paragraphs (1) ~~and (2)~~, (2), *and* (3) of subdivision (b)
5 may make those determinations for purposes of this section.

6 (d) If the determination is made by a designated peace officer
7 described in subdivision (c) that an emergency situation exists, a
8 peace officer shall not be required to knock and announce his or
9 her presence before entering, installing, and using any electronic
10 amplifying or recording devices.

11 (e) If the determination is made by a designated peace officer
12 described in subdivision (c) that an emergency situation exists and
13 communications are ~~intercepted~~ *overheard*, an application for an
14 order approving the ~~interception~~ *eavesdropping* shall be made
15 within 48 hours of the beginning of the ~~interception~~ *eavesdropping*
16 and shall comply with the requirements of Section 629.50. *A court*
17 *may grant an application authorizing the use of electronic*
18 *amplifying or recording devices to eavesdrop and record otherwise*
19 *confidential oral communications in barricade or hostages*
20 *situations where there is probable cause to believe that an*
21 *individual is committing, has committed, or is about to commit an*
22 *offense listed in Section 2516(2) of Title 18 of the United States*
23 *Code.*

24 (f) The contents of any oral communications ~~intercepted~~
25 *overheard* pursuant to this section shall be recorded on tape ~~or~~
26 ~~wire~~ or other comparable device. The recording of the contents
27 shall be done so as to protect the recording from editing or other
28 alterations. ~~The contents of the oral communications shall be~~
29 ~~provided to the judge at the time an application is made pursuant~~
30 ~~to subdivision (e).~~

31 (g) For purposes of this section, a “barricading” occurs when a
32 person establishes an area from which others are excluded.

33 (h) A judge shall not grant an application made pursuant to this
34 section in anticipation that an emergency situation will arise. A
35 judge shall grant an application ~~for an interception~~ *authorizing the*
36 *use of electronic amplifying or recording devices to eavesdrop*
37 *and record otherwise confidential oral communications in*
38 *barricade or hostages situations where there is probable cause to*
39 *believe that an individual is committing, has committed, or is about*
40 *to commit an offense listed in Section 2516(2) of Title 18 of the*

1 *United States Code, and* only if the peace officer has fully complied
2 with the requirements of this section. If an application is granted
3 pursuant to this section, an inventory shall be served pursuant to
4 Section 629.68.

5 (i) This section does not require that a peace officer designated
6 pursuant to subdivision (c) undergo training pursuant to Section
7 629.94.